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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOE R. et al., Persons Coming Under
the Juvenile Court Law.

B238416

(Los Angeles County
Super. Ct. No. CK86544)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SONIA P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Timothy Saito, Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

In connection with its order terminating dependency jurisdiction over 10-year-old Joe R., Jr. and nine-year old Christian R., on November 7, 2011 the juvenile court, pursuant to Welfare and Institutions Code section 362.4,¹ granted joint legal custody of the children to their mother, Sonia P., and their father, Joe R., Sr. and full physical custody of both children to Joe Sr. with monitored visitation for Sonia. On appeal Sonia contends the court erred in denying her shared physical custody and requiring her visitation to be monitored. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Voluntary Maintenance Contract

On August 17, 2010 the Los Angeles County Department of Children and Family Services (Department) entered into a voluntary family maintenance contract with Sonia and Joe Sr. after a referral and follow-up investigation revealed Sonia was using methamphetamine and abusing alcohol. The family maintenance agreement required Sonia to participate in drug counseling, random drug and alcohol testing and domestic violence and parenting education. Joe Sr. also agreed to participate in domestic violence counseling and parenting classes. At the time Sonia and Joe Sr., who were and remain legally separated, shared custody of Joe and Christian: On alternate weeks the children lived with Sonia either Thursdays through Sundays or Wednesdays through Friday mornings; they lived with Joe Sr. the rest of the time.²

2. The Dependency Petition, Adjudication and Disposition

While the family maintenance agreement was in place, Sonia missed several drug tests, twice tested positive for methamphetamine and was terminated from her drug treatment program. As a result, on February 14, 2011 the Department filed a section 300 petition alleging Sonia had a history of substance abuse, was a current abuser of alcohol

¹ Statutory references are to the Welfare and Institutions Code.

² Sonia had full custody of her two other minor children, Jerry (17 years old) and Melanie (16 years old), who are not related to Joe Sr. Although Jerry and Melanie were covered by the family maintenance agreement and named in a subsequent dependency petition, they are not the subjects of this appeal.

and methamphetamine and her drug and alcohol abuse were interfering with her ability to care for her children, placing each of them at risk of harm.

Following a mediation, Sonia submitted the matter on the basis of an amended petition, the Department's reports and the mediation agreement, which recommended that Sonia complete parenting, substance abuse and alcohol programs with weekly random drug and alcohol testing and participate in individual counseling. Under the mediation agreement Sonia would continue to have overnight visitation with Joe and Christian provided she remained compliant with the case plan and did not miss a drug or alcohol test or test positive for drugs or alcohol. Joe Sr., who was nonoffending, also submitted to the jurisdiction of the court based on the recommendations in the mediation agreement.

On April 20, 2011 the court sustained the allegations in the amended petition, declared Joe and Christian dependent children of the court, removed them from Sonia and released them to Joe Sr. with overnight, unmonitored visitation for Sonia conditioned on her participating in drug and alcohol treatment programs, attending individual counseling and testing negative for drugs and alcohol.³

3. The Six-month Review Hearing and Termination of Dependency Jurisdiction

At the October 19, 2011 six-month review hearing (§ 364), the Department requested the court terminate its jurisdiction over Joe and Christian with an order for joint legal custody but awarding Joe Sr. sole physical custody of the boys with monitored visitation for Sonia. The Department's recommendation was based on Sonia's noncompliance with the case plan, including several missed drug tests from August 2011 through September 2011. She had also not attended parenting or drug treatment classes and had recently been involved in a violent altercation with her boyfriend's sister. Sonia objected, and the court set the matter for a contested hearing.

Sonia testified at the November 7, 2011 contested hearing. She disputed the Department's account of eight missed drug tests, asserting she had only missed two and explaining those absences were due to a back injury and her work schedule. She

³ Sonia's older children, Jerry and Melanie, were placed with her.

acknowledged she had been dropped from a parenting class for nonattendance, but insisted she had recently reenrolled. She also acknowledged she had “missed a few” counseling sessions because of work, but testified she could now attend since she was no longer working. Sonia also told the court she had just been diagnosed with depression and had begun psychotropic medication to treat that condition. She had not enrolled in a drug treatment program because she believed she was required only to enroll in an alcohol treatment program. Finally, she said she suffered physical injuries after her boyfriend’s sister had unjustifiably attacked her; Joe and Christian were not with her when that altercation occurred.

Following Sonia’s testimony, the children’s counsel and Joe Sr.’s counsel withdrew their initial support for a custody and visitation order giving Joe Sr. primary physical custody and awarding Sonia unmonitored and overnight visitation and instead supported the Department’s recommendation that dependency jurisdiction be terminated with a custody order granting full physical custody to Joe Sr. with monitored visitation for Sonia. The court concluded those recommendations were sound and in the children’s best interests, explaining, “there are concerns that are still existing in this case,” including Sonia’s inconsistent drug and alcohol testing and failure to attend or make any substantial progress in her drug and alcohol treatment programs, as well as the recent violent altercation with her boyfriend’s sister. The court terminated its jurisdiction over Joe and Christian, then stayed the termination order pending receipt of the family law order. The family law order was received on November 14, 2011. The court’s order terminating its jurisdiction was entered the same date.⁴

DISCUSSION

1. Governing Law and Standard of Review

Section 362.4 authorizes the juvenile court, when terminating its jurisdiction over a child who has been declared a dependent child of the court, to issue a custody and

⁴ Jurisdiction over Jerry and Melanie was not terminated.

visitation order (an “exit” order)⁵ that will become part of the relevant family law file and remain in effect in the family law action “until modified or terminated by a subsequent order.” When making a custody determination under section 362.4, “the court’s focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; accord, *In re Chantal S.* (1996) 13 Cal.4th 196, 206.) This determination is made without reference to any preferences or presumptions ordinarily applicable in the family court. (See *In re John W.* (1996) 41 Cal.App.4th 961, 972 [ordinary “presumption of parental fitness ‘that underlies custody law in the family court just does not apply to dependency cases’”].)

We review the juvenile court’s decision to terminate dependency jurisdiction and to issue a custody order pursuant to section 362.4 for abuse of discretion (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318) and may not disturb the order unless the court ““exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.”” (*Ibid.*; accord, *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)⁶

2. The Court’s Custody and Visitation Order Was Well Within Its Discretion

Sonia does not challenge the termination order. Rather, she contends the court erred in granting Joe Sr. sole physical custody with only monitored visitation for her

⁵ Although not used in the dependency statutes, the term “exit order” has become shorthand for custody orders issued pursuant to section 362.4. (See *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 301; see also *In re Chantal S.* (1996) 13 Cal.4th 196, 203 [“[w]hen the juvenile court terminates its jurisdiction over a dependent child, section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court”].)

⁶ Sonia presumes, incorrectly, the court’s section 362.4 order is subject to substantial evidence review. (See *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318 [proper standard of review is abuse of discretion].) As a practical matter, however, the difference between the two standards of review (substantial evidence and abuse of discretion) in these circumstances is “not significant.” (*In re C.B.* (2010) 190 Cal.App.4th 102, 123; see *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [same].)

because she had enjoyed unmonitored visitation throughout the dependency proceedings and nothing had occurred while the children were in her care to justify altering that arrangement. She further asserts she had “completed a substance abuse program,” had recently begun taking medication to treat her depression and had reenrolled in parenting classes.

This is not a close question. The evidence showed Sonia had missed several drug tests; she had not enrolled in, much less completed, a drug treatment program; and she had only recently begun addressing her depression and participating in parenting classes. The court expressed its belief that Sonia sincerely loved her children and wanted to do the best for them. However, in light of her failure to make any substantial progress toward addressing the issues that had led to the dependency proceedings (the minimal progress she had made was simply too recent to credit with any confidence), the court found it was in Joe and Christian’s best interests that they remain in Joe Sr.’s custody and their visitation with Sonia be monitored while she continued to try to resolve those problems. That order was well within the court’s broad discretion in such matters.

DISPOSITION

The court’s custody and visitation order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.